

February 2, 2006

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In re Equivoice, Inc. (Filer ID # 822086) Request for Review of
Decision of Universal Service Administrator,
CC Docket No. 96-45*

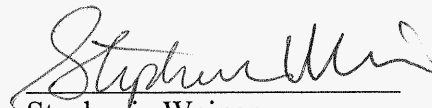
Dear Ms. Dortch:

Attached please find the Second Declaration of Richard Pierce, which supplements the Request for Review of Decision of Universal Service Administrator filed on behalf of Equivoice, Inc. on May 18, 2005.

A copy of the Second Declaration has also been served on the Universal Service Administrative Company.

Please feel free to contact me or John Nakahata (202-730-1320) with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Stephanie Weiner', written over a horizontal line.

Stephanie Weiner
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, NW
Washington, DC 20036
(direct) 202-730-1318
(fax) 202-730-1301

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Request for Review by Equivoice, Inc. |) | |
| of Decision of Universal Service Administrator |) | CC Docket No. 96-45 |
| |) | |
| Filer ID # 822086 |) | |
| |) | |

SECOND DECLARATION OF RICHARD PIERCE

I, Richard Pierce, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Richard Pierce. I am now Vice-President of Equivoice, Inc. (“Equivoice”) successor to Equivoice LLC¹, a reseller of telecommunications services based in Illinois. During the events at issue in this appeal of the March 2, 2005 decision issued by the Administrator of the Universal Service Administrative Company (USAC), I was Managing Member of Equivoice LLC. In that capacity, I am familiar with the terms by which Equivoice has been assessed and made universal service fund (USF) contributions.

2. The purpose of this declaration is to assure that Equivoice’s appeal, filed on May 18, 2005, is in full compliance with section 54.719(b)(2) of the Commission’s rules, which requires that a request for review of a decision by USAC contain “[a] full statement of relevant, material facts with supporting affidavits and documentation.” 47 C.F.R. § 54.721(b)(2).

¹ In January 2005, Equivoice LLC was reorganized as Equivoice, Inc.

3. I have reviewed the factual assertions set forth in the appeal and hereby certify that they are true and correct to the best of my knowledge.

4. Equivoice's Request For Review of the Decision of the Universal Service Administrator, as filed on May 18, 2005, is attached to this declaration.


Richard Pierce

Dated: 1-31-06

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

Request for Review by Equivoice, Inc.)
of Decision of Universal Service Administrator)

CC Docket No. 96-45

Filer ID # 822086)
_____)

**EQUIVOICE'S REQUEST FOR REVIEW OF DECISION OF UNIVERSAL
SERVICE ADMINISTRATOR**

Equivoice Inc. ("Equivoice") successor to Equivoice LLC¹, by counsel, hereby appeals the decision of the Universal Service Administrator, the Universal Service Administrative Company ("USAC"), dated March 21, 2005,² and alternatively requests that the Commission waive the requirement that Equivoice directly contribute to the USF fund based on its reported revenues for January 1 to December 31, 2001 and, in connection therewith, remove the associated USF charges, interest, and late payments assessed on Equivoice.

Equivoice has good cause for such an appeal or waiver: Equivoice *has already paid* USF contributions based on those same revenues, albeit indirectly. For calendar year 2001, Equivoice was treated as an end-user by MCI Worldcom ("MCI"), which reported Equivoice's revenues to USAC, paid all related USF fees, and recovered the costs from Equivoice. Despite the fact that the fund has already received these

¹ In January 2005, Equivoice LLC was reorganized as Equivoice, Inc.

² Exhibit A, Administrator's Decision on Contributor Appeal, USAC (March 21, 2005).

contributions, USAC has charged Equivoice for a second time, demanding, as of April 2005, \$48,669.77 with interest continuing to accrue. Under these circumstances, it is in the public interest and in the interest of substantial justice for the FCC to direct USAC to correct this unwarranted double billing and to waive any associated late payment fees and interest.

BACKGROUND

Prior to April 30, 2002, Equivoice, a reseller of telecommunications services, purchased such services from MCI as a retail commercial customer. During the period from January 1 through December 31, 2001, Equivoice obtained service from MCI as an end-user of telecommunications services, and not as a carrier.³ Accordingly, MCI included the revenues it received from Equivoice in its Form 499 filings for that period, contributed to the USF fund based on those revenues, and assessed universal service recovery fees on Equivoice.⁴ Over that twelve month period, Equivoice paid a total of \$86,243.38 in USF recovery fees to MCI.⁵

In 2002, after consultation with USAC, Equivoice determined that, as a provider of end-user telecommunications services, it should report telecommunications revenues and contribute universal services payments directly.⁶ In complying with the universal service rules, Equivoice filed a Form 499A in July 2002, reporting interexchange revenues of \$815,219 for January 1 to December 31, 2001. In that filing, Equivoice

³ See Exhibit B, May 28, 2003 Letter from MCI UUNET.

⁴ See *id.*

⁵ See Exhibit C, Declaration of Richard Pierce ¶ 4 (“Pierce Declaration”).

⁶ See Pierce Declaration ¶ 5.

explained that it had paid USF charges based on those revenues directly to MCI.⁷ Also, in April 2002, Equivoice began filing Form 499Qs to report its 2002 revenues, and directly contributing to the USF based on those revenues. Equivoice has complied with all USAC filing requirements and paid all USF assessments in full for revenues earned from January 1, 2002 to date.⁸

For each of three months beginning in October of 2002, USAC invoiced Equivoice approximately \$17,000 in USF charges in addition to the assessments based on its 2002 revenues. Equivoice continued to pay its current USF assessments, but disputed these additional charges. Through discussions with USAC representatives, Equivoice learned that the charges reflected “true-up” adjustments based on the 2001 revenues Equivoice had reported on its 2002 Form 499A, for which it had also paid universal service fees to MCI. Equivoice attempted to resolve the matter in April 2003 by filing an amended 2002 Form 499A that omitted the 2001 revenues previously reported by MCI. By letter dated June 20, 2003, USAC informed Equivoice that it would not process the revised Form 499A because it was inaccurately submitted. With interest and late payments, the total amount in dispute is \$48, 669.77.⁹

Equivoice appealed the USF charges based on its 2001 revenues to the USAC Administrator by letter dated September 2, 2003.¹⁰ Over eighteen months later, the Administrator rejected Equivoice’s appeal.¹¹ The Administrator found that, under FCC

⁷ See Exhibit D, 2002 Form 499A, line 603 filed by Equivoice July 30, 2002.

⁸ See Pierce Declaration ¶¶ 7-8.

⁹ See *id.* ¶ 9.

¹⁰ Exhibit E, Letter to USAC Appeals, Office of General Counsel (Sept. 2, 2003).

¹¹ Exhibit A, Administrator’s Decision on Contributor Appeal, USAC (March 21, 2005).

regulations, Equivoice as the carrier with end-user revenue had “the primary obligation to report correct revenue information on the Form 499 so that USAC may accurately assess universal service obligations.”¹² And even if MCI had previously paid USF charges on Equivoice’s reported revenue, the Administrator explained, USAC had no authority to waive Equivoice’s primary obligation to do so. Thus, according to the Administrator, whether Equivoice was billed twice and whether relief is warranted are questions “appropriately directed to the Commission.”¹³

ARGUMENT

The Commission should direct USAC to remove the USF charges, and the associated interest and late payment fees, assessed on Equivoice based on its 2001 revenue because imposing such charges here would force Equivoice to make contributions to universal service that are inequitable and would serve no non-punitive purpose.

Generally, the Commission may waive its rules upon good cause shown, including where the particular facts make strict compliance inconsistent with the public interest.¹⁴ The Commission has taken into account hardship, equity, or more effective implementation of an overall policy as bases for granting a waiver, and the courts approve of this approach.¹⁵ Equivoice clearly demonstrates good cause under the Commission’s traditional waiver analysis.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ 47 C.F.R. § 1.3; *AT&T Wireless Servs. v. FCC*, 270 F.3d 959, 965 (D.C. Cir. 2001); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ See *AT&T Wireless Servs.*, 270 F.3d at 965-66; *Northeast Cellular Telephone Co.*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 127 (1972).

First, imposing these charges on Equivoice would plainly be inequitable.

Equivoice should not be forced to pay for the same USF obligation twice. The letter from MCI UUNET¹⁶ makes clear that MCI paid into the fund on the basis of MCI's 2001 billings to Equivoice and recovered the costs from Equivoice. The Administrator did not dispute that both Equivoice and MCI reported Equivoice's revenue for January 1 to December 31, 2001, or that the associated USF charges had previously been paid by MCI. While the Administrator did question whether Equivoice had paid – either directly or indirectly – USF fees based on its May and June 2002 revenues, that query is both irrelevant and specious. To begin with, only the USF fees based on Equivoice's 2001 revenues are at issue in this dispute. In any event, Equivoice's May and June 2002 revenue was reported on its 2003 Form 499A and Equivoice has, in fact, directly contributed to the USF based on that revenue.¹⁷

In requesting a waiver, Equivoice is in no way seeking to avoid its universal service obligations. In fact, as its MCI billing records¹⁸ show, for calendar year 2001, Equivoice made USF payments to MCI totaling \$86,243.38 – over 50 percent more than the approximately \$50,000 it would have owed had it paid into the fund directly. Under ordinary circumstances, of course, Equivoice could attempt to recover any duplicative USF payments to USAC from MCI. But the circumstances here are not so ordinary. MCI filed for bankruptcy in July 2002, making any claim by Equivoice one of pre-petition debt. Having missed the January 23, 2003 deadline for filing a proof of claim in

¹⁶ See Exhibit B.

¹⁷ Pierce Declaration ¶ 8.

¹⁸ See Pierce Declaration ¶ 4, Exhibit 1, Monthly Statement Summaries from MCI invoicing Equivoice for "Federal Universal Service Fee."

the bankruptcy proceedings – which passed while Equivoice's appeal was still pending before USAC, Equivoice is forever barred from asserting such a claim.

Second, requiring Equivoice to make USF payments directly that it has already made indirectly would accomplish nothing. Because the USF has already received contributions associated with Equivoice's 2001 revenue, there is no shortfall in the fund. And there is no question here that the revenues were accurately reported to USAC. Equivoice understands that it has the primary responsibility for contributing to USF, and that USAC can better monitor revenues and payments when the reseller of telecommunications services, rather than the underlying carrier, directly fulfills the USF obligation arising from its end-user revenues. Indeed, once it became aware of its responsibility, Equivoice filed the 2002 Form 499A and reported the 2001 revenues that are the subject of this dispute in an effort to bring itself into compliance with the system. Since that time, Equivoice has correctly reported all revenues directly to USAC and paid all USF assessments in full. Enforcing the double billing charges would only penalize Equivoice for recognizing and trying to correct its mistake. Such a sanction would serve no purpose here, where the USF charges based on Equivoice's 2001 revenue have already been paid and Equivoice is now in full compliance with the universal service rules.

Finally, the Commission should bear in mind that Equivoice is an extremely small telecommunications company. Given the substantial changes in reporting requirements that were made to implement the post-1996 Act Universal Service Fund and the fact that the underlying carriers were billing charges labeled as universal service fees, it is not surprising that some smaller carriers, such as Equivoice, did not understand that they should contribute directly to USF, rather than indirectly through other carriers.

Significantly, Equivoice made the effort to determine its reporting responsibilities, and should not be forced to make double payments for doing so.

CONCLUSION

Equivoice respectfully requests that the Commission reverse the Administrator's assessment of USF charges, interest, and late fees on Equivoice based on its 2001 revenues because requiring Equivoice to double pay its universal service obligation for those revenues would be inequitable, serve no policy purpose, and be inconsistent with the public interest.

Respectfully submitted,

EQUIVOICE, INC.

/s/

John T. Nakahata, Esq.
Stephanie Weiner, Esq.*
Harris, Wiltshire & Grannis LLP
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Washington, DC 20036
(202) 730-1300

Attorneys for Equivoice, Inc.

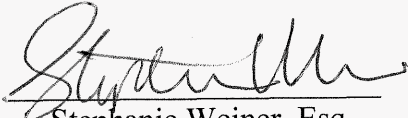
May 18, 2005

*Admitted in Massachusetts. Practice limited to matters and proceedings before federal courts and agencies.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2006, I served a true and correct copy of the foregoing Second Declaration of Richard Pierce upon the following via First Class Mail, postage prepaid:

Universal Service Administrative Company
2000 L Street, N.W.
Suite 200
Washington, DC 20036


Stephanie Weiner, Esq.